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ABSTRACT

Low-income mothers and fathers often share a desire to support their children, but current government policies may pit parents against each other, often to the detriment of their children. This report sets out a shared public policy agenda for newly elected leaders at all levels of U.S. government as part of the Common Ground Project, designed to advance public policy recommendations, to promote effective coparenting relationships, and to ensure emotional and financial support for children. The report is based on the recommendations generated at a meeting of public policy advocates, practitioners, researchers, and staff of the National Women's Law Center and the Center of Fathers, Families and Public Policy. Part 1 of the report presents the goals of the Common Ground Project, with the initial focus on paternity establishment as a gateway to other child support and related family law issues. Part 2 discusses the changing law of paternity establishment related to welfare reform legislation. Part 3 examines paternity establishment from the perspective of low-income mothers and fathers, focusing on economic, relationship, procedural, and collateral issues. Part 4 presents recommendations for improving paternity establishment practices and procedures, including the following: (1) Congress and the states should better educate parents about paternity establishment, make the process fairer and more accessible, and eliminate coercive policies; (2) policies should make paternity establishment more beneficial for poor families, including public assistance recipients; (3) child support should go to children, not for welfare cost reimbursement; and (4) additional safeguards should be instituted to protect victims of domestic violence. (Contains 117 reference notes.) (KB)

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Family Ties:

Improving Paternity Establishment Practices and Procedures for Low-Income Mothers, Fathers and Children

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I. THE COMMON GROUND PROJECT

The Common Ground project is a collaboration of the National Women's Law Center (NWLC) and the Center on Fathers, Families and Public Policy (CFFPP). It grew out of a shared belief that low-income mothers and fathers often share a desire to support their children but that public policies often do not recognize the complexity of their relationships and family structures, and may end up pitting parents against each other rather than helping them work together to provide for their children. The goal of the project is to bring together individuals who work with low-income mothers and fathers to develop and advance public policy recommendations to promote effective co-parenting relationships and ensure emotional and financial support for children.

The 1996 welfare law, the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA), is presenting low-income parents with many decisions that affect their ability to support their children. Time limits, work requirements, and other restrictions on benefits under the Temporary Assistance for Needy Family (TANF) program, for example, are placing increased pressures on the poorest custodial mothers. New tools for collecting child support can help secure additional, much-needed support for children from many noncustodial parents. However, for the poorest noncustodial fathers, who face many of the same barriers to employment faced by custodial mothers receiving TANF, tougher enforcement measures are creating increased financial pressures as well. The resulting conflicts may well drive parents into opposing corners, creating increased tensions and, in some cases, an increased risk of violence, despite a mutual concern for their children. The goal of policy makers and advocates must be to avoid such a result.

The public discussion of these issues tends to highlight the points of disagreement and conflict between low-income mothers and fathers, rather than their common interests. Similarly, advocates working on these issues tend to work either on behalf of low-income mothers or fathers. While in some instances these groups support the same policies, they are often—just like low-income mothers and fathers—confined in the public policy arena to staking out adversarial positions on either side of an issue. The Common Ground project provides a rare opportunity for advocates, practitioners, and researchers who work primarily with low-income mothers, and those who work primarily with low-income fathers, to come together, explain their concerns, reach a better understanding of the issues, and, in many instances, forge solutions that meet the needs of all family members. The goal is to achieve policies that reflect the perspectives—and the areas of common ground—of both mothers and fathers in these fragile families, which should improve outcomes for these families.

Low-income mothers and fathers often share a desire to support their children but public policies may end up pitting parents against each other rather than helping them work together.

To carry out the project, NWLC and CFFPP have assembled a diverse and distinguished group of public policy advocates, practitioners, and researchers. In a series of meetings, the participants, including CFFPP and NWLC staff, are exploring the issues and developing public policy recommendations focused on the special concerns of low-income mothers and fathers in several areas of family policy. Participants in the project who participated in the meeting on paternity establishment, the subject of this report, are listed in the Appendix.

This first Common Ground report focuses on paternity issues because the establishment of paternity is a "gateway" to other child support and related family law issues. However, it is also intertwined with them. Participants at the meeting on paternity establishment agreed that it was impossible to discuss paternity establishment without considering its economic, social, and other legal consequences. Later meetings and reports will explore these related issues in more detail. The second Common Ground report will discuss policies on setting and modifying child support awards for low-income families and policies to increase family income. The third report will discuss child support enforcement issues and policies. The final report will discuss custody and visitation issues. In all these areas, participants are considering the cross-cutting issue of family

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violence, as well as the effect of other issues such as substance abuse, incarceration, HIV/AIDS and other serious illnesses.

NWLC and CFFPP have prepared this report in consultation with the participants at the meeting on paternity establishment, to capture the discussion at the meeting and to present the recommendations that emerged from the discussion. However, CFFPP and NWLC are solely responsible for the final product.

The goal is to achieve policies that reflect the perspectives—and the areas of common ground—of both mothers and fathers in these fragile families, which should improve outcomes for these families.

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II. PATERNITY ESTABLISHMENT: THE CONTEXT

The Changing Law of Paternity Establishment

If a child is born to parents who were married when the child was born or conceived, the law presumes that the husband is the father; no additional action is required to establish the child's paternity. To establish legal paternity for a child whose parents are unmarried, formal action must be taken. However, the nature of the legal process required to establish paternity for a child of unmarried parents has changed dramatically within the last several decades. This process of change continued in 1996, when PRWORA required states to make significant changes in their laws and policies concerning paternity establishment: changes that create both new opportunities and new pressures for low-income, never-married mothers and fathers.

a. Paternity establishment before PRWORA

Historically, the only way that paternity could be established was through the courts.[1] Because a paternity case was a quasi-criminal proceeding (extramarital sex was a crime), the father had the right to a trial by jury and paternity had to be proved beyond a reasonable doubt. Short statutes of limitations required that cases be brought soon after a child's birth. Over the last 30 years, however, paternity establishment has changed from a criminal or quasi-criminal judicial proceeding to either a voluntary process requiring no more than the signing of affidavits, or a civil, often administrative, proceeding.

Various cultural, political and scientific factors contributed to these changes. Nonmarital childbearing became more common and less stigmatized. The increase in single-parent households, including divorced, separated, and never-married parents, led to higher public assistance costs and a desire among policy makers to require noncustodial parents to contribute more to the support of their children. Delays and difficulties in state systems for establishing paternity led to improvements and streamlining in the process for establishing paternity. Increasingly accurate genetic tests made simpler proceedings more feasible.

Twenty-five years ago, paternity establishment and child support enforcement were almost entirely matters of state law. The federal government first began directing substantial resources to the child support system in 1975 when Congress added Title IV-D to the Social Security Act of 1935 to create the federal/state child support enforcement program (often referred to as the "IV-D program").[2] As a condition of receiving federal funding for their welfare programs (then Aid to Families with Dependent Children, or AFDC), and to receive federal matching funds for child support enforcement, Title IV-D requires states to comply with various federal child support enforcement requirements.[3]

The original focus of the IV-D program was on collecting child support on behalf of children who received public assistance to recoup federal and state welfare expenditures. Under AFDC, parents who received public assistance were required to assign their rights to collect child support to the state, and to "cooperate" with the state child support enforcement agency in establishing paternity and collecting support.[4] However, parents who were not receiving public assistance also could apply to IV-D for paternity establishment and child support enforcement services.[5] In the years that followed, Congress encouraged IV-D programs to provide more services to families not receiving public assistance through financial incentives, allowed states to collect spousal support along with child support, and provided IV-D agencies with new enforcement tools to be used in public assistance and non-public assistance cases.[6] Today, families not receiving public assistance represent a large majority of the cases in state child support programs nationwide.[7]

Over time, the paternity establishment process has become easier and less stigmatized.[8] Beginning in the 1970s, some states set up administrative processes in which paternity could be established through the state's child support agency and

The nature of the legal process required to establish paternity for a child of unmarried parents has changed dramatically within the last several decades.

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PRWORA requires states to streamline the paternity establishment process and make it easier for parents to establish paternity voluntarily—but also increases the pressure on states, and on public assistance recipients, to establish paternity.

affirmed by a court. In the 1980s, several states began to allow parents to voluntarily acknowledge paternity in hospitals and other locations. By the 1980s, all states accepted the use of blood tests to rule out paternity; beginning in the 1970s, some states began to use genetic tests to establish paternity.

Congress also amended Title IV-D several times to require all states to adopt laws making it easier for states to establish paternity and to set standards for state IV-D programs in the area of paternity establishment. In 1984, Congress required all states to permit paternity to be established through age 18.[7] In 1988, Congress mandated that states require that all parties in a contested paternity case submit to genetic testing,[8] and that state law create a rebuttable or conclusive presumption of paternity whenever genetic test results show a high probability of paternity.[9] In 1993, Congress required all states to allow paternity establishment through expedited procedures and to set up procedures for voluntary acknowledgments, including hospital-based programs.[10] However, states could decide whether signing a form voluntarily actually established paternity, or was merely evidence that could be used in a later paternity proceeding.[11] Beginning in 1988, Congress set performance standards for state child support programs to meet in establishing paternity; those standards were tightened in 1993.[12]

b. Paternity establishment under PRWORA

PRWORA requires states to adopt and implement a variety of new policies concerning paternity establishment, streamlining the process and making it easier for parents who want to establish paternity voluntarily.[13] PRWORA also increases the pressure on states, and on recipients of public assistance, to establish paternity.[14]

First, states must take additional measures to encourage and facilitate voluntary paternity establishment. States must use a voluntary acknowledgment form that meets minimum requirements set by the federal Department of Health and Human Services.[15] In general, states must recognize a signed acknowledgment of paternity as a legal finding of paternity unless it is rescinded within 60 days[16]; no further legal action may be required to make the voluntary acknowledgment legally binding.[17] After 60 days, paternity acknowledgments may be challenged in court only for fraud, duress, or material mistake of fact.[18] States must require that paternity be formally established before an unmarried father's name is recorded on the birth certificate.[19] The law and the implementing regulations require states to make voluntary paternity establishment services broadly available at birth records agencies, as well as at public and private hospitals where they had been required earlier.[20] They also give states broad discretion in designating other organizations that can offer these services, including health care providers, public assistance agencies, child care providers, community-based organizations and legal services providers.[21] States are required to provide materials and training to any organization authorized to offer voluntary paternity establishment services, to ensure that parents are informed of their rights, responsibilities, legal consequences of paternity establishment, special protections for minor parents (if there are any special protections for minors in state law) and alternatives to establishing paternity.[22] Organizations providing paternity establishment services, both governmental and nongovernmental, are required to provide the opportunity for parents to speak to a trained person to answer any questions before the paternity acknowledgment form is signed.[23]

Second, PRWORA requires states to adopt laws that simplify paternity establishment in contested cases. The law further promotes the use of genetic testing: child support agencies must be able to order genetic tests themselves, without applying for a court order; the results of properly conducted tests must be more readily admitted as evidence; and states must pay for genetic tests they order (although costs can be recouped later from the parent or parents under certain circumstances).[24] PRWORA also requires that states authorize the entry of

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judgments of paternity by default, eliminate jury trials in paternity cases, and enter temporary support orders pending the outcome of a paternity determination when there is clear and convincing evidence of paternity.[7]

Third, states must give putative fathers the opportunity to bring an action to establish paternity.[8]

Fourth, PRWORA toughens paternity and child support cooperation requirements for applicants for and recipients of public assistance in several ways. Under AFDC, applicants and recipients who failed to cooperate in establishing paternity or collecting support were sanctioned by having their AFDC grant cut by the caretaker's portion; payments for the children were unaffected.[9] Under PRWORA, states must reduce the TANF grant to the family by at least 25 percent for noncooperation, and may terminate TANF assistance to the entire family if they choose.[10] Over half the states authorize full-family sanctions.[11] Under AFDC, federal regulations defined "cooperation." These regulations provided that if an applicant or recipient attested to a lack of information about the identity or whereabouts of the father or putative father, she would be considered to have met the cooperation requirement.[12] Under PRWORA, to meet the cooperation requirement, a parent must provide the name "and such other information as the state may require" with respect to the noncustodial parent.[13] Some states require that applicants provide specific items of information before they will be deemed cooperative. Failure to provide the required items of information is considered noncooperation in these states, even if the applicant attests to a lack of knowledge.[14] States also have more discretion than under AFDC to add other "cooperation" requirements, although they may not require that the individual sign a "voluntary" acknowledgment of paternity or relinquish the right to genetic tests.[15]

Under both AFDC and PRWORA, applicants and recipients with "good cause" for not cooperating in paternity establishment or child support enforcement, such as domestic violence, may be excused from the cooperation requirement.[16] However, under AFDC, federal regulations defined the circumstances in which "good cause" for noncooperation would exist, and the procedures states had to follow in determining a good cause claim.[17] Under PRWORA, states have discretion to define what constitutes "good cause" and other exceptions from cooperation requirements, and the kind of proof the parent must present to qualify for an exception.[18] Despite research showing an especially high prevalence of domestic violence among welfare recipients,[19] good cause is rarely claimed and even more rarely granted. In Fiscal Year 1997, states reported that good cause claims were filed in only 4,190 cases nationwide, and that good cause was found to exist in only 2,296 cases.[20]

Another way PRWORA toughens cooperation requirements is by changing the procedures by which noncooperation is determined. Under AFDC, the welfare agency determined whether an applicant or recipient had cooperated or had good cause for noncooperation.[21] Under PRWORA, responsibility for determining cooperation is shifted from the welfare agency to the child support enforcement agency,[22] and state welfare agencies are now subject to penalty themselves if they fail to sanction recipients after a finding of noncooperation.[23] States also are now permitted to choose whether determinations of "good cause" for noncooperation will be made by the state child support enforcement agency, or by the state welfare, child welfare, or Medicaid agencies.[24]

At the same time as PRWORA increases the possible penalties for noncooperation, the new law reduces the incentives for families receiving public assistance to cooperate. Under AFDC, parents receiving assistance had to assign (turn over) their rights to child support to the state;[25] however, in 1984, Congress required states to give families up to $50 of any child support the state collected on their behalf each month (the "pass-through") and to disregard that amount when calculating the family's public assistance benefit.[26] The remainder was kept by the states and the federal government as reimbursement for public assistance paid to the family.[27] In PRWORA, Congress kept the requirement that recipients of

PRWORA toughens paternity and child support cooperation requirements for applicants and recipients of public assistance but reduces the incentives for families receiving public assistance to cooperate.

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Recent research is challenging the stereotypes of nonmarital fathers as absent or uninvolved from birth and the stereotypes of unmarried mothers as uninterested in the father's involvement.

TANF assistance assign their rights to support to the state, up to the amount of assistance provided to the family.[48] However, PRWORA eliminates the mandatory pass-through and disregard for families receiving public assistance; states are now allowed to set their own policies.[49] A majority of states have chosen to eliminate the pass-through and disregard altogether.[50] In those states, none of the money paid by noncustodial parents on behalf of children receiving public assistance goes to their children, all of it goes to the state and federal governments to reimburse public assistance costs. This change has dramatically reduced the child support going to poor children. In Fiscal Year 1996, under AFDC, the federal government reported that about $337 million in child support payments was passed through to families receiving public assistance, and disregarded in calculating their welfare grants.[51] In FY 1997, under PRWORA, this amount had dropped to $40 million.[52]

Once families have left public assistance, they are entitled to receive all current support paid on their behalf.[53] This was the rule under AFDC, and is the rule under PRWORA.[54] However, PRWORA increases the ability of families, once they have left public assistance, to receive more of the child support arrears collected on their behalf, by giving priority to those claims over arrears assigned to the state in certain circumstances.[55]

Fifth, PRWORA increases the pressure on states to increase the number and percentage of paternities established in relation to nonmarital births. PRWORA raises the paternity establishment standard to 90 percent.[56] States that fail to meet the standard, or the alternative standard for improvement, may be penalized.[57] In addition, under the new incentive payment system created by the Child Support Performance and Incentive Act of 1998, performance on various indicators, including paternity establishment, determines the level of federal incentive payments states receive.[58]

The changes in laws and public policies concerning legal paternity establishment have had an impact. Between 1994 and 1998, the number of paternities established through the IV-D child support system or in-hospital voluntary acknowledgment more than doubled.[59]

2. Unmarried Parents and Their Children

About one out of three children in the United States is born to unmarried parents,[60] making policies concerning paternity establishment relevant for many American families. Recent research is exploring the complexity of these family patterns, and is challenging the stereotypes of nonmarital fathers as absent or uninvolved from birth and the stereotypes of unmarried mothers as uninterested in the father's involvement.

To gain more insight into these family relationships, the Fragile Families and Child Well-Being Study has begun to follow a new birth cohort of children and their (mostly unmarried) parents and children.[61] The study is designed to provide information about child health and development in fragile families; the relationships between parents and between parents and children in these families; and the factors that promote and hinder positive relationships and successful child outcomes. The study includes the fathers and mothers of randomly sampled children born out of wedlock in 20 large U.S. cities, and a smaller comparison sample of mothers and fathers of randomly sampled children born to married parents. Parents are interviewed shortly after the birth of the child, at the hospital whenever possible, with followup interviews one, two, three and four years following the birth.[62]

The data from two cities—Oakland, California and Austin, Texas—have found that at birth, most of these children have two parents involved with them and with each other.[63] Indeed, about half of the unmarried parents interviewed at the hospital reported they were cohabiting.[64] This finding is consistent with other research showing that an increasing number of births to unmarried parents in the United States are to unmarried—but cohabiting—parents.[65] During the period 1990-1994, two out of

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five unmarried births were to cohabiting parents, up from 29 percent in 1980-1984.[58] Indeed, nearly all of the increase in nonmarital births between these two periods was among cohabiting couples.

A majority of the unmarried mothers and fathers interviewed in Oakland and Austin reported that the father had made some financial contribution during the pregnancy and had visited at the hospital or been present at the birth.[59] At the time of birth, large majorities of unmarried fathers and mothers in this sample reported that the father intended to continue to contribute and be involved with the child's life, and over 90 percent of new mothers said that they wanted the father to be involved in raising the child.[60] Nearly 70 percent of mothers said their chances of marriage were 50-50 or better.[61] Only seven percent of mothers reported that the fathers were physically abusive.[62] This is a substantially lower percentage of women reporting domestic violence than surveys of welfare recipients and other poor women have found.[63]

Despite these parents' desire to provide for their children, they face substantial challenges. The typical new father in these two Fragile Families sites had an income of less than $12,500 a year, the typical mother only $4,000 to $5,000.[64] In Oakland, nearly one out of four fathers and two out of five mothers had not worked in the previous year.[65]

Other research shows a greater risk of poverty among children born to unmarried parents than to other children living with single parents. An analysis of data from the 1997 National Survey of America's Families found that 60 percent of nonmarital children living with single mothers were poor, as compared with 37 percent of children living with single mothers who were born to married parents.[66] However, marital status was a less important factor in predicting child poverty than were differences in mothers' education, work status, and residence with another adult relative, usually a grandparent.[67] Differences in fathers' characteristics were not analyzed in this study.

The percentage of never-married mothers receiving child support has increased dramatically in the last 30 years, but is still considerably lower than the percentage of divorced and separated women receiving support (18 percent versus 42 percent).[68] For children who receive it, especially poor children, child support is a significant source of family income, representing over one-third of the family income of poor children whose families are not receiving public assistance (and who are therefore entitled to receive all support payments).[69] There are data from the National Survey of Families and Households indicating that nonmarital fathers who have established legal paternity are more likely to have contact with their children several years after the birth than other nonmarital fathers, and are more likely than other nonmarital fathers to pay at least some child support.[70] However, research indicates that fathers who have established paternity generally have higher incomes and better relationships with the mothers than other unmarried fathers: factors correlated with higher rates of child support payment and child involvement.[71] And, in general, never-married fathers, like never-married mothers, have lower incomes than their divorced counterparts.[72] Research cannot yet answer the question of how the legal establishment of paternity—by itself, after other differences between parents who do and do not establish paternity are taken into account—affects the emotional and financial support available to children of unmarried parents.

Despite the desire of unmarried parents to provide for their children, they face substantial challenges: the typical new father in two Fragile Families study sites had an income of less than $12,500 a year, the typical mother only $4,000 to $5,000.

3. The End of Welfare as We Knew It

In addition to changes concerning paternity establishment, PRWORA imposes a variety of new requirements and restrictions on receipt of public assistance benefits. The law forbids the use of federal TANF funds to provide assistance to a family for more than 60 months total;[73] nearly half the states have more restrictive time limits.[74] TANF recipients who fail to comply with work requirements are subject to sanctions, which can be as severe as eliminat-

To support their children, poor mothers increasingly must rely on their own limited resources—and the resources of their children's fathers.

ing the grant for the entire family for the first instance of noncompliance. Recipients also may be sanctioned for failing to comply with state requirements other than the child support cooperation and work requirements, such as failing to ensure that their children are immunized or attend school regularly, or failing to meet other requirements of their "personal responsibility contract."[44] States may—but need not—provide waivers from program requirements for victims of domestic violence.[45]

The threat of sanctions is very real. In an average month in 1998, about 112,700 families were receiving reduced benefits because of sanctions, an additional 23,100 had lost all cash benefits as a result of sanctions.[46]

Low-income immigrants are particularly affected by PRWORA changes. The eligibility of legal immigrants who have not become citizens for federal means-tested benefits, including TANF, Food Stamps, Medicaid, and Supplemental Security Income, has been restricted, especially for those coming to the United States after August, 1996.[47]

Since the adoption of PRWORA, the number of low-income families receiving TANF has fallen 49 percent,[48] while poverty rates among single-mother households have declined only eight percent.[49] Participation also has declined in the Food Stamp[50] and Medicaid[51] programs, though many families still have incomes low enough to qualify for both programs. More single mothers are working, and the circumstances of some families have improved since they left welfare; but many are still struggling, and the incomes of the poorest 20 percent of single-parent families have declined.[52]

In sum, to support their children, poor mothers increasingly must rely on their own limited resources—and the resources of their children's fathers.

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III. PATERNITY ESTABLISHMENT FROM THE PERSPECTIVE OF LOW-INCOME MOTHERS AND FATHERS

The participants in the Common Ground project came together from different backgrounds and perspectives to develop recommendations to increase the financial and emotional support available to children of low-income parents, promote effective coparenting relationships, and, most importantly, improve outcomes for these fragile families—who are struggling so mightily for a better life. Participants recognized that formal paternity establishment could offer benefits to many children and parents, and wanted to ensure that low-income communities and families had better information about and access to paternity establishment.

However, participants also noted that, especially in the diverse and complicated circumstances of the lives of poor, never-married parents and their children, the relationship between legal paternity establishment and increased emotional and financial support is complex. Fathers who have not formally established paternity may be positively involved in the lives of their children and even providing financial support. And when child support payments go to the state to reimburse public assistance costs rather than to the child, formally establishing paternity may reduce, rather than increase, the likelihood that the child will receive economic and emotional support. In a minority of cases in which there is a history of domestic violence, establishment of paternity may create additional risks of violence or abuse.

Participants at the Common Ground meeting identified the issues and concerns of low-income mothers and fathers relating to legal paternity establishment. The issues clustered in four areas: the economic impacts on the households of both parents; the effects on family and extended family relationships and on communities; concerns about procedural fairness; and the collateral effects of paternity establishment on other aspects of the legal system (for example, on immigration status).

Economic issues

Economic issues—including federal and state policies on establishing, modifying, and enforcing support orders, and policies to improve family income and help both parents contribute to their children's support—will be the focus of the second Common Ground report. However, participants at the paternity meeting agreed that it was impossible to discuss paternity establishment without considering its economic implications. The usual assumption is that paternity establishment is economically beneficial to children because it is the first step in obtaining formal child support, and confers rights to public and private benefits such as Social Security dependents' benefits and inheritance rights. For children whose mothers and fathers both are poor, however, and especially for children receiving public assistance, this assumption is less likely to be true.

The usual assumption is that paternity establishment is economically beneficial to children but, for children whose mothers and fathers both are poor, this assumption is less likely to be true.

a. Assignment and state debt: when child support is not for children

For families who need public assistance, the economic pressures relating to paternity establishment are especially intense. As previously described, custodial mothers applying for or receiving TANF assistance to provide for their basic needs must assign their rights to collect child support to the state and cooperate with the state's efforts to establish paternity and collect support. If mothers are deemed "uncooperative" they will lose at least some—and, in most states, all—of the public assistance benefits their families need to survive. Participants who work with low-income mothers reported that many fear—with some justification—that if they do not cooperate and their benefits are cut, the foster care system will step in to take their children away because they are unable to support them.

If paternity is established for a child receiving public assistance, the state—not the mother—controls the decision whether to pursue child support. In public assistance cases, this step is virtually auto-

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The mandatory assignment of child support rights means that support payments go to reimburse the state and federal governments for welfare costs and children receiving public assistance often receive nothing from fathers who may be struggling hardest to pay support.

matic. Participants who work with poor fathers, men whose income is not only low, but often irregular as well, reported that many fear—with some justification—that the child support obligation established will be impossible for them to meet and that they will be subject to a variety of sanctions—including jail.

The pressures and frustrations felt by both parents are increased by the fact that, in most states, none of the child support collected through this coercive process goes to children receiving public assistance. The mandatory assignment of child support rights means that support payments go to reimburse the state and federal governments for welfare costs. Participants agreed that this is one of the most alienating features of the current system: that many of the children most in need, those receiving public assistance, receive nothing from the fathers who may be struggling the hardest to pay child support.

Participants who work with low-income fathers emphasized that having child support payments go to the state, rather than to children, undermines efforts to promote paternity establishment and the payment of support. Men frequently ask them, "Why do I need to establish paternity?" The standard answer from the child support agency is, "It's good for your kids." Participants felt that for the fathers of children receiving public assistance, that was an incomplete and even dishonest answer. "What makes people crazy is when the system says, 'I want to help kids and make families better,' but what they really mean is, 'I want my money back.'" said one participant. "When the child support system says, 'We want to strengthen families,' it's a lie. The system's set up to recover welfare payments," echoed another.

In addition to having monthly child support payments go to the state, not their children, the fathers of children receiving public assistance face other economic disincentives. In many states, fathers who agree to establish paternity may find themselves immediately, and deeply, in debt, required to reimburse the state for welfare assistance provided to the child before paternity was established or the birthing costs paid by Medicaid. One participant recently received a call from a low-income father who had voluntarily established paternity: "he walked in owing nothing, and walked out owing $3,000."

Burdening low-income fathers with debts to the state that they have no realistic hope of repaying damages the long-term economic prospects of low-income mothers and children, as well as low-income fathers. It is a serious deterrent to paternity establishment, even for men willing to take on the responsibility of making on-going support payments. State agencies may try to avoid the disincentive by failing to inform men contemplating voluntary paternity establishment that they may walk out owing thousands of dollars; however, participants agreed, word eventually gets around.

Children may receive less on-going support from fathers who owe large debts to the state, even if paternity is established. Even if such fathers manage to increase their earnings or resources, the money may go to pay down the state debt, not to increase current formal or informal child support. And some fathers facing impossible debts may try to disappear into the underground economy, making it less likely that their children will receive economic or emotional support.

Some low-income mothers who know that when they leave public assistance they will need and could benefit from child support nevertheless are reluctant to establish paternity and seek child support through the formal system because of child support assignment and state debt policies. These mothers know that the fathers of their children also have limited income, and may understand the fathers' problems because they share them: inadequate preparation for good jobs, discrimination, limited opportunities in their communities. Low-income mothers as well as fathers may fear the consequences, including possible incarceration, of burdening the fathers with debts to the state that they can never repay.

Community organizations working with low-income families are put in a difficult situation by current policies on child support assignment and state debt. Many participants thought that community-

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based organizations are in a better position than government agencies to communicate with and help low-income mothers and fathers understand the paternity establishment process, because community organizations are more likely to talk the same language, understand the community's culture and values, and be trusted. But the very trust community organizations enjoy leads to ambivalence about taking on the role of promoting paternity establishment in all cases. Representatives of community-based organizations felt that low-income parents are entitled to full and honest information about the economic and other implications of paternity establishment and that they have an obligation to provide it. However, they recognized that a policy of full disclosure, in the current system, might result in fewer paternities being established.[4]

Assignment and state debt policies do not just deny most children receiving public assistance an immediate economic benefit from the payment of child support. Participants working with low-income fathers and mothers were concerned that the policies may reduce the emotional, as well as the economic, support that children receive. They noted that relationships between parents and between parents and children, which may be fragile to begin with, are put under additional stress when poor noncustodial parents struggle to make support payments to the state, but poor custodial parents are unaware of, or see no benefit from, these efforts.

The costs of these policies—greater distrust between parents, between their extended families, between each parent and the child support agency, and the creation, in many cases, of a continuing burden of debt owed to the state—are likely to be felt by many families even after the children no longer receive public assistance and are eligible to receive current support.

Common Ground participants agreed that especially in a world of time-limited welfare, child support should go to children—that using child support payments to reimburse welfare costs no longer makes any sense.[5] Under the old AFDC program, cash assistance was seen as a potentially long-term substitute for the financial contribution of the absent parent, to allow low-income single parents to care for their children at home. The assignment of child support to the government by recipients of AFDC served to offset these on-going public expenditures. Under TANF, however, assistance is time-limited, and in most states, custodial parents are required to work as soon as they start receiving benefits.[6]

In the low-income communities Common Ground participants work with, most poor mothers receiving public assistance are well aware that somehow, and soon, they will have to manage without it, and want help from the fathers. Many poor fathers want to do right by their children, but are frustrated by the demands and policies of the welfare and child support systems.

To encourage parents to establish paternity and work together to support their children, participants recommended eliminating the assignment of child support to the state and state debt policies, and allowing parents, not the state, to decide whether to pursue a formal support order following paternity establishment.[7]

b. Living without a safety net

When custodial parents leave welfare, they are entitled to receive all of the current child support paid for their children. For mothers struggling to provide for themselves and their children from low-paying jobs, often without child care subsidies or health insurance, even small amounts of additional income can make a real difference. When fathers are able to pay child support, participants agreed, they should—and the law should vigorously enforce that obligation. But participants struggled at the meeting, as they do in their work, with the harsh reality that some of the fathers of the poorest children are poor themselves.

One participant highlighted the situation of one of his clients: a man receiving Supplemental Security Income (SSI) because he was too disabled to work

For mothers struggling to provide for their children from low-paying jobs even small amounts of additional income can make a real difference, but the harsh reality is that some fathers of the poorest children are poor themselves.

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Legally establishing paternity can be beneficial for many children but establishing legal paternity is not the same as being a father.

and had income below poverty. He was expected by the child support agency to get a job and make regular support payments. But another participant responded that in her state, SSI payments for a single individual were higher than the total TANF benefits a mother with two children would receive.

Another portrayed the choices starkly—between kids going hungry and dads being homeless, or going to jail, because they simply could not pay what was required. As one participant put it, "When we take away the safety net, we're saying to poor moms, go fight with poor dads."

Participants agreed that for paternity establishment to become a long-term economic benefit for children, changes in the child support system are needed. Representatives of low-income mothers and fathers both felt that their constituencies have difficulty getting the child support system to respond to their needs. In some states, mothers who want a child support order have to wait years after paternity is established to get an order, losing years of potential support. In other states, orders are established automatically following paternity establishment even though neither parent, perhaps because they are cohabiting, want a formal order.

The size of the order is also a concern. Participants agreed that impossibly high orders—which low-income fathers are especially likely to confront—can discourage paternity establishment and participation in the formal child support system (and economy). But participants struggled with the question of what the financial obligations of poor fathers should be, given the responsibilities that poor mothers are struggling with, and reserved the development of specific recommendations about minimum orders, in-kind support, and child support guideline awards for the next meeting.

Participants agreed, however, that changes in more than the child support enforcement system are required to increase the likelihood that legal paternity establishment substantially improves the economic circumstances of children born to poor, unmarried parents. Participants recognized that low-income custodial and noncustodial parents face many of the same barriers to finding and retaining decent jobs. They recommended that low-income parents, especially minor parents, be provided with additional social services to increase their ability to provide support to their children. Participants agreed that at the next Common Ground meeting, when policies for determining and modifying support awards are discussed, various approaches to increasing family income will be considered.

2. Relationship Issues

a. In the best interest of children and families

Common Ground participants discussed how the child support system generally, and the formal process of paternity establishment specifically, affect the relationships between parents and children, between parents, and among family members. Underlying this discussion was the assumption that children benefit from a good relationship with each of their parents; from parental relationships that are cooperative, or at least free of violence and serious conflict;[7] and from connections to extended family and community networks—an especially important resource for children whose parents are both poor.

A paternity acknowledgment or order establishes a legal relationship between the father and the child. It is the first step in the formal child support process, legally identifies the father for purposes of inheritance and other benefits, and permits nonmarital fathers to seek court-ordered visitation or custody. Participants agreed that legally establishing paternity could be beneficial for many children and their families.

Participants emphasized, however, that establishing legal paternity was not the same as being a father. Participants agreed that, in general, parent-child relationships are formed and nurtured outside of the paternity establishment system. A good relationship can exist without the formal establishment of legal paternity and a bad relationship cannot be

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fixed nor a previously nonexistent feeling created simply by establishing legal paternity. However, the act of legally establishing paternity, and the consequences of legal paternity establishment, can affect relationships both positively and negatively.

Paternity establishment can provide some children with a more secure sense of identity and social connection. It can provide access to paternal medical and genetic information and can provide the social currency and support systems that come with extended family relationships. It can lead some currently inactive noncustodial parents to become more active in their children's lives—a positive outcome in many cases, but potentially detrimental or even dangerous for children, as well as their mothers, in cases of abuse.[14]

Participants discussed the different meanings that legal paternity establishment has for different parents and in different communities. For some parents whose relationships are good, voluntarily establishing legal paternity can be an affirmation of their feelings toward each other and the child.[15] But for other parents with good relationships, who may be considering marriage to each other, paternity establishment may be seen by them and their community as inconsistent with eventual marriage. And for others, involvement of the formal legal system—a system they and others in their communities generally may perceive as alien or hostile—may jeopardize a cooperative adult relationship, or add new stresses to a tense relationship, especially if parents have no control over the legal process. Several participants noted that for some parents and communities, the father's informal acknowledgment—identifying the child as his to his family and community and providing material support and help—may be more meaningful than a legal establishment of paternity. Other participants, however, were concerned that if the relationship between the parents changes, an informal acknowledgment may not provide as reliable a foundation for continuing support as a formal acknowledgment.

b. When only the state wants paternity established

Parents who need public assistance or Medicaid are not free to decide for themselves whether to establish legal paternity. As explained above, they must assist the state in establishing paternity unless the state is satisfied that "good cause" for noncooperation exists. Once paternity is established, the state will generally seek a child support order to ensure repayment to the government of welfare costs. In contrast, parents who do not seek public assistance may decide for themselves whether to establish legal paternity, and separately decide whether to apply for additional child support enforcement services.

Participants had a number of concerns about having the state pursue paternity establishment and child support against the wishes of both parents. Participants were concerned that the coerciveness of the process, and the pursuit of paternity establishment or child support in inappropriate circumstances, could affect the relationships between parents and with their children adversely. At a more philosophical level, some participants felt that the state should not make critical decisions about family life as a condition of providing poor parents with necessities for their children.

Participants were particularly concerned about the consequences of establishing paternity in situations where there has been domestic violence, because paternity establishment creates an on-going legal relationship between a battered woman and her abuser. Concerns about domestic violence are not limited to situations in which the state initiates the paternity process, as discussed below. But the risks are greatest when the state initiates paternity establishment in public assistance cases. The incidence of domestic violence among women who receive welfare is especially high.[16] Although on paper, all states have a "good cause" exception from the child support cooperation requirement for victims of domestic violence, qualifying for the exception may be difficult. One participant noted that in her state, only five

Establishing paternity in situations where there has been domestic violence raises concerns because paternity establishment creates an on-going legal relationship between a battered woman and her abuser.

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Some low-income fathers perceive that mothers are using the child support enforcement system to punish them, but mothers receiving welfare have almost no control over the process, and both parents, accordingly, may vent their frustrations on each other.

percent of the domestic violence waivers sought from TANF requirements were granted. Public assistance recipients have almost no control over the subsequent child support enforcement process. Moreover, the child support enforcement agency does not represent parents in custody or visitation disputes that may flow from child support enforcement efforts, and low-income battered women may find it especially difficult to obtain legal representation in such cases.

State-initiated paternity establishment and support enforcement can have negative impacts on family relationships even in situations not involving abuse, participants noted. One participant suggested that being forced by the state into the formal child support system can make fathers feel as if they have fallen short of society's expectations of them as men and fathers. Some men react in accordance with that negative perception of themselves and withdraw from relationships with their children and their children's mother. The economic consequences of paternity establishment for very poor fathers, as described above, can leave low-income fathers feeling—justifiably, in the view of some participants—helpless, hopeless, and convinced that legal paternity establishment is only about money. This, too, can have a detrimental effect on their relationship with their children and their children's mother.

Some low-income fathers caught up in the child support enforcement system perceive that mothers are using the system to punish them or deny them access to their children. But custodial parents in the welfare system have almost no control over the process of establishing paternity or enforcing support. Because neither parent can prevail against the power of government actions, they vent their frustrations and feelings of powerlessness against each other.

Several participants were concerned that the state's insistence on creating a legally bound two-parent family sometimes got in the way of making the best decisions for the child. Especially in some poor communities, extended family members and other adults may play a major, even primary, caretaking role. Yet the effect of paternity establishment on these important relationships is often ignored. Participants generally agreed that it is important for government and society to recognize that families are broader than mother, father and children, and that child support, welfare, and family court systems must consider the impact of their actions on the role of extended families and multiple families, within various communities and cultures.

In the context of the current system, Common Ground participants had differing views about how likely it was that poor mothers, fathers and children would benefit from formally establishing paternity. Some participants suggested that, given the harshness and rigidity of the current mandatory welfare-child support enforcement system, for some low-income parents and children the benefits of economic support and positive interaction and involvement from both parents and their families might be better achieved through an informal paternity acknowledgment to the community than through the formal paternity process. Other participants questioned what an "informal acknowledgment" would mean if the parents' relationship deteriorated, and saw greater potential benefits from legal paternity establishment, especially as families are leaving welfare more quickly. But all participants recognized that the coerciveness of the current system, which conditions subsistence benefits for custodial mothers and children on cooperating in paternity establishment, and policies that divert child support payments from children negatively affect the way legal paternity establishment and the state child support enforcement system are perceived by low-income parents and communities. Participants emphasized the importance of changing these policies, and providing parents with full information and access to the services they need to enable them to make decisions about what is best for their children, influenced by their own culture and community.

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c. When only one parent wants paternity established

In some cases, unmarried parents no longer have a relationship with each other, or have a relationship marked by conflict or distrust. In these and other situations, the parents may be unable to agree about whether to establish paternity voluntarily, or to make mutually satisfactory arrangements concerning child support, custody, or visitation. Although Common Ground participants opposed having the state coerce parents into formally establishing paternity when neither parent wanted it, they recognized the importance of having procedures by which either parent could easily initiate the formal paternity establishment process when one of them wanted to do so.

For many mothers, the formal paternity establishment and child support enforcement system provides a way of legally identifying the father and a basis for securing needed economic support. Especially as more low-income mothers struggle to get by without public assistance, and become aware that, as a practical matter, it is easier to establish paternity early in a child's life,[61] they may seek to bring more low-income fathers into the formal paternity establishment process. Participants agreed that low-income mothers who wish to initiate the process should be able to rely on the establishment and enforcement powers of the formal system. But they recognized that this too could strain relationships.

Some fathers believe that a woman who pursues paternity establishment through the formal system is demonstrating her lack of trust in him and in his willingness to do the best he can to support his child. Because many low-income fathers have encountered negative experiences and negative reports about the child support system, they tend to consider use of the formal system as an affront to their integrity. Better information and services for low-income mothers and fathers to help them understand the system, their rights, and the perspective of the other parent are needed to ease the tensions.

Participants agreed that, though fathers have a legal right to initiate paternity proceedings, as a practical matter poor men are rarely able to marshal the resources and information necessary to do so. Most low-income fathers generally feel isolated from the decision-making processes, and are not proactive in the child support system. Better information and services are needed to address these issues as well.

Some fathers do, however, initiate paternity proceedings. Legal paternity establishment permits a father to seek court-ordered visitation or custody. This can create tensions, if the mother perceives paternity establishment as an effort to "take her children away." Better information about the process and better access to services, including mediation to help parents resolve disputes about custody and visitation, could help some parents develop a more cooperative relationship. So could greater access to parenting education programs that help parents develop and maintain respectful, cooperative parenting relationships.

Participants agreed that although father involvement is desirable in many situations, there are others in which it is undesirable or even dangerous. Domestic violence is the clearest example. Some participants also were concerned that in situations where there is general conflict between parents, especially if the father is highly controlling and has greater access to resources, legal paternity establishment and the increased conflict and litigation it could lead to might be detrimental to the child. Other participants emphasized that it was important to distinguish cases involving physical violence from those in which parents were just behaving badly or vying for control. Participants were unable to decide how and where lines should be drawn, however, or to agree on how, or whether, the potential for increased problems in the parents' relationship in the future should be considered at the point a father seeks to establish paternity. Later Common Ground meetings will address ways to address these issues in the context of custody and visitation.

Although the state should not coerce parents into formally establishing paternity, either parent should be able to easily initiate the formal paternity establishment process.

Staff engaged in the paternity establishment process should be trained in domestic violence issues and how domestic violence can affect whether a paternity acknowledgment is truly voluntary.

d. Addressing domestic violence

Participants recognized that legally establishing paternity when there has been a history of abuse can create increased risks for mothers and children, however the process is initiated.

An effort to establish paternity or enforce support can trigger a violent reaction by a batterer angry about support enforcement, or provide a batterer with previously unavailable information about a mother's whereabouts. This can occur whether the legal process was initiated by the state or the mother. However, mothers who are free to decide for themselves about paternity establishment at least can make their own assessment of risk, wait until the risk seems less, and take some other protective steps if necessary. Mothers receiving public assistance have no such freedom. Participants agreed that elimination of the assignment and cooperation requirement would help address this problem. If this is not possible, they recommended that procedures for claiming a good cause exception be improved. They also recommended that protections for domestic violence survivors who seek child support—whether they are required to do so or do so voluntarily—be improved.

Some abusive men initiate paternity establishment themselves, using the paternity establishment process and litigation over custody and visitation to continue to abuse and control the mother. One participant noted that since civil protection orders against abuse have become more common, abusive men have become more strategic, using the paternity and custody process to continue an abusive relationship with the mother. Participants agreed that community-based programs could play an important role in helping fathers recognize and deal with abusive behaviors.

Domestic violence also can be an issue when parents are approached in the hospital to establish paternity "voluntarily." As one participant noted, the father's presence in the hospital doesn't automatically mean his relationship with the mother is a good one. And it may be difficult for a mother, especially one who is emotionally stressed and physically exhausted from just giving birth, to say that she does not want to acknowledge the paternity of a batterer who is sitting next to her. Accordingly, most participants thought that hospitals should screen for domestic violence in connection with voluntary paternity establishment, by interviewing the mother separately from the putative father. This screening could be accomplished pursuant to a general hospital protocol by staff other than those involved in obtaining voluntary paternity acknowledgments. Some participants, however, thought that because the time spent in the hospital at childbirth is short, domestic violence screening may not be feasible. These participants were concerned that to require such screening would deny the majority of parents, who do not have domestic violence issues, the convenience of establishing paternity in the hospital.

Participants recognized that screening for domestic violence in some other settings where paternity could be acknowledged, such as birth records offices, poses somewhat different issues. In these settings, at a minimum, staff engaged in obtaining voluntary acknowledgments of paternity should be trained in domestic violence issues and the ways in which domestic violence can affect whether an acknowledgment of paternity is truly voluntary.

3. Procedural Issues

a. Providing information about voluntary paternity establishment

Establishing paternity—or not establishing paternity—has enormous implications for the lives of the involved parties. Official state materials and information from staff at organizations that assist parents in establishing paternity often will declare that establishing paternity is good for the child. However, neither source may adequately explain to parents the procedures for or consequences of establishing paternity. Accordingly, parents and the general public are often misinformed or confused about how paternity may

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be established and its consequences. The result is that some parents are reluctant to establish paternity voluntarily, and others establish paternity without fully understanding the results of their actions.

Participants generally agreed that the goal should be to facilitate paternity establishment, rather than mandate it. One participant suggested that the state should utilize the public health model of massive public education coupled with easy procedures that are routinely offered. The participants identified three target groups for this educational effort: the general public; the staff of public and private institutions or organizations that assist parents in the paternity establishment process; and parents who have not established paternity.

Participants agreed that the state needs to provide more honest and widespread public education. The materials developed by the state should be culturally and linguistically appropriate. One participant noted that materials (and the educators who use them) may be linguistically accurate without having cultural currency. While the message should be honest about the economic and other consequences of establishing paternity, it should also include information about the potential benefits of establishing a lasting legal relationship between the child and both parents. One participant suggested that ways to introduce concepts of paternity in more settings need to be developed. As an example, this participant noted that, in Texas, students in biology classes are taught about DNA and paternity tests. Some thought that education and new ways of thinking about paternity establishment need to come from the community (in the form of community-based organizations and community leaders) rather than from the government. One way to facilitate this would be to provide a process for obtaining input from community-based organizations on the appropriateness of a state's materials and its messages.

Participants agreed that there needs to be better training of staff at institutions and organizations that assist parents in establishing paternity. Most voluntary paternity acknowledgments are signed at hospitals, which was a problematic locale for several participants. They expressed concerns about the hospital setting because current hospital maternity stays are brief and the period surrounding childbirth is emotionally stressful. Thus, parents are often not emotionally or mentally equipped to digest the paternity acknowledgment form and/or make a decision during the hospital maternity stay. This problem is compounded when parents receive inadequate information about the consequences of acknowledging paternity.

Participants agreed that permitting voluntary paternity establishment at other locations should be encouraged. However, improving in-hospital procedures is important as a practical matter because it is a convenient locale for many parents. Participants recommended better training of hospital staff so that they can sufficiently answer parents' questions on the paternity establishment process; the development and distribution by hospitals of culturally sensitive brochures that clearly explain the paternity establishment process and are available in different languages; and the inclusion on the voluntary paternity establishment form of information about the effect of voluntary paternity establishment on custody and visitation.

Participants also discussed the suggestion that community-based organizations and social service providers be involved directly in voluntary paternity establishment. The advantage of these organizations is that they are involved in and trusted by the communities. But some participants feared that the trust that the community places in these organizations could be eroded by their participation in paternity establishment if the overall paternity establishment process remains coercive and economically disadvantageous for many families. No consensus was reached. Participants agreed, however, that better training of staff and the dissemination of culturally sensitive brochures in different languages would help improve the operation of all locales that offer paternity establishment services. Some participants felt strongly that personnel should be able to speak the

The goal should be to facilitate paternity establishment, rather than mandate it, by providing better information to the general public, organizations that assist parents in the paternity establishment process, and parents themselves.

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Parents often do not have sufficient or accurate information about the effect that a voluntary acknowledgment of paternity will have on custody and visitation rights–both immediately and over the long term.

language of the community they serve (e.g., Spanish). Participants also agreed that the current policy of some states of assessing a fee for all non-hospital voluntary acknowledgments should be abolished.

In addition to having information about the direct consequences of paternity establishment, both parents need to be aware that, in certain circumstances, establishing paternity may have legal consequences that are unrelated to issues of child support, custody and visitation. Staff who are involved in voluntary paternity establishment need to be aware of these consequences and alert parents to them. For example, the establishment of paternity may, in some states, impose liability for child support on a child's grandparents. A mother who is seeking public assistance while cohabiting with the father of her child may be committing, under certain circumstances, an act of welfare fraud. This circumstance could be detected and possibly prosecuted if, as a result of establishing paternity, the office of public assistance discovered that the mother and father were cohabiting. Likewise, establishing paternity may in some cases alert law enforcement authorities to the location of individuals who are being sought under warrant. In addition, establishing paternity may subject some parents to charges of statutory rape, or may prevent some parents from successfully adjusting their immigration status, as described in more detail in Section 4.

b. Clarifying the effects of paternity establishment on custody and visitation

Parents often do not have sufficient or accurate information about the effect that a voluntary acknowledgment of paternity will have on custody and visitation rights — both immediately and over the longer term. Mothers may not know, for example, that signing the acknowledgment could give the father the right to take the baby from the hospital without the mother's consent. Fathers may not know that signing the acknowledgment gives them the right to assert custody and visitation rights. Neither mothers nor fathers may know that some legal action beyond acknowledging paternity may be necessary to resolve these issues, or how to take such action.

Participants agreed that both parents need to be fully informed, as part of the voluntary paternity establishment process, about the effect of establishing paternity on their rights to custody and visitation. Beyond that, some participants objected to efforts to try to resolve these issues in the hospital or similar settings where time is short and the legal options are potentially complex. Other participants argued that unless some resolution—even if only on a temporary basis—is made at the outset, of at least the custody issues, parents will be deterred from voluntarily establishing paternity.

For example, uncertainty about custody could lead a mother who has a problematic relationship with the father to avoid establishing paternity. If domestic violence is present, a mother might not want to establish paternity without assurance that custody will be resolved in a way that protects her and her child's safety. If either parent is a minor, he or she may fear a claim for custody by a grandparent (the minor's parent) once paternity is established.

To address these concerns, the participants discussed three possible models.

In the first model, at the time of a voluntary acknowledgment of paternity, the mother would be given presumptive physical and/or legal custody, with the presumption ripening into a permanent determination of custody if the father did not request any change in custody within a specified time period. If the father requested a change, a custody determination would be made without regard to the initial presumption or the fact that the child had been placed with the mother temporarily. Both parents would be given full information on their rights to custody and how to assert them. In addition, parents would need ready access to mediation and/or legal counsel to resolve custody issues. The "ripening" period from temporary to permanent custody might be 60 days because that is the same time period within which either parent can rescind a voluntary acknowledg-

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ment of paternity, or it might extend to some period beyond the 60 days, so that it is clear that recission is no longer an issue.

In the second model, the parents would be required to agree on which parent would have physical and/or legal custody and acknowledge their decision on a form with legal effect at the time paternity is acknowledged. For example, at the bottom of the paternity acknowledgment form there could be a line that reads "we agree that the child will live with X." Either parent could be provided 60 days to rescind the custody agreement, and it would be automatically rescinded if the acknowledgment of paternity was rescinded.

In the third model—a variation of the first two—the mother would be awarded presumptive physical and/or legal custody at the time of voluntary paternity acknowledgment, unless the parents signed an agreement with legal effect that they had decided otherwise.

No consensus was reached but participants agreed that some temporary resolution of custody should be part of the voluntary paternity establishment process and that these issues would be explored further at a later meeting devoted to custody issues. Participants also agreed that services to help parents resolve custody issues should be readily available and that parents should be told at the hospital or other location authorized to establish paternity about these services.

c. Paternity testing

When an individual contests paternity, courts or agencies often will order a genetic test to establish whether the man is the father of the child in question. The price of genetic tests ranges from about $200 to $500, which can exceed the resources of many low-income parents. Under federal law, when the child support agency orders a genetic test, it must pay for the test but has the option of recovering the fee from the losing party as costs.[102] When a party requests retesting, however, the law *requires* the requesting person to pay the cost.[103] In cases in which the losing party or, in the event of a retest, the requesting party, is indigent, these rules may be inconsistent with the Supreme Court's decision in *Little v. Streater*, 452 U.S. 1 (1981), which held that in a case brought by the government in which genetic tests were requested by an indigent party, the government must pay the cost.

Participants discussed the hardships for low-income parents in requiring them to pay for genetic tests, and the benefits—for the mother, the putative father, the child, and the state—of promptly resolving questions of paternity. They agreed that states should not require low-income individuals to pay for genetic testing.

There are hardships for low-income parents in requiring them to pay for genetic tests, and benefits–for the mother, the putative father, the child, and the state–in promptly resolving questions of paternity.

d. Rescission of voluntary acknowledgments

Federal law requires that voluntary acknowledgments of paternity have the full force and effect of law within 60 days of signing.[104] Federal law also requires that states allow either signer to rescind the acknowledgment within that period or the date of any judicial or administrative proceeding relating to the child in which the signer is a party, whichever is earlier.[105] After this period an acknowledgment can only be challenged for fraud, duress or material mistake of fact.[106] Although federal regulations provide some guidance to states concerning the process for voluntarily establishing paternity, the regulations are silent about rescission.[107]

When parents are fully informed about paternity establishment before signing a voluntary acknowledgment, few want to exercise their right to rescind. But in the real world, poor women and men are especially likely to be pressed to sign an acknowledgment without access to the information they need, and only thereafter recognize that signing the acknowledgment was ill-advised. For example, either signer might realize that there is a possibility that the man who signed is not the biological father. A victim of domestic violence could be faced with a demand for custody or visitation that she believes will put her

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or her child at risk. Or a signer might simply not have understood the legal consequences of acknowledging paternity. The right to rescind a voluntary acknowledgment promptly can be an important protection for children and parents, avoiding a more painful challenge to paternity later in the child's life.

Some states fail to provide information about how to rescind a voluntary acknowledgment and some states seem to have no procedures developed at all.

Participants were concerned that some states fail to provide information about how to rescind a voluntary acknowledgment. Indeed, some states seem to have no procedures developed at all. The absence of clearly defined procedures poses particular risks. For example, an individual might think that he or she has effectively rescinded an acknowledgment of paternity by sending a signed statement to the hospital where the acknowledgment was signed. But, if the hospital has no role in the rescission process, notice of the "rescission" might not be transmitted to the other signer, birth records office, or the IV-D agency, creating problems for all concerned.

Participants recognized that a rescission, like a voluntary acknowledgment of paternity, has legal consequences that need to be clearly addressed. For example, notification of the rescission should be sent to the other signer of the acknowledgment. The birth certificate, if it has already been issued, should be amended. If the acknowledgment creates a presumption or agreement concerning custody or visitation, that should be nullified.

Most participants thought that in a system that appropriately emphasizes simple and informal procedures for ***establishing*** paternity, simple and informal procedures for ***rescinding*** acknowledgments—within the statutory 60-day period—are also appropriate. Most participants found problematic the requirement that a voluntary paternity acknowledgment can be rescinded within this time period only by filing a formal legal action. Such a requirement may deter low-income men and women from voluntarily acknowledging paternity in the first instance or prevent them from being able to rescind it, since they are less likely than middle- or upper-income individuals to have the resources necessary to file such an action. Most participants thought that it should be possible to rescind an acknowledgment by filing a form comparable to the voluntary acknowledgment form at the IV-D agency or the birth records office. Some participants thought that, although it might present difficulties of access for low-income parents, a formal proceeding should be required to rescind an acknowledgment of paternity, even within 60 days of signing, because that is the best way of ensuring that its legal consequences, such as its effect on custody, can be resolved.

e. The rights of minor parents

The establishment of paternity when one or both of the parents is a minor raises a unique set of issues. Many states do not allow minors to enter into contracts or binding agreements without the consent of a parent or guardian *ad litem* (person appointed to represent a minor in a legal proceeding), and acknowledgments of paternity may be subject to this rule.[108] The rationale for the rule is to protect minors from entering into legal agreements when they may not be old enough to be fully aware of the consequences. At the same time, some states permit "emancipated" minors to make legally binding agreements, with emancipation defined as living on one's own or, in some instances, becoming a parent.[109] The rationale for this rule is that a minor who is functioning as an adult should be able to make legally binding agreements as well.

Federal law requires only that if state law provides any special protections for minors, the minors must be notified of those protections.[110] Some states require specifically that the minor's legal guardian sign the paternity affidavit,[111] while other states permit minor parents to sign paternity affidavits without the consent of a parent or guardian *ad litem*.[112] Most states, however, have not enacted laws to address this issue.[113] States whose laws are silent are problematic because a court may decide that because a parent was a minor, a voluntary acknowledgment did not effectively establish paternity, creating problems in a later child support or custody proceeding.

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Participants discussed whether minors should be able to establish paternity voluntarily without representation by a parent or guardian ***ad litem*** but did not reach a consensus. Concern was expressed from both the mother's and father's perspective about the ability of minors, on their own, to understand the legal consequences of acknowledgment. At the same time, participants did not agree that minors should be prohibited from acknowledging paternity without a parent or guardian's consent. Participants did agree that state law should expressly address the issue and not leave it to later court interpretation.

Similar issues arise with respect to minors in the recission process. Some participants suggested that the 60 days should start to run from the date that the minor turns eighteen, when he or she is more likely to understand the consequences of legally establishing paternity. Other participants countered that this proposal is unfair to the mother and child, who could have relied on the acknowledgment for several years, only to have it rescinded.

In the end, the group agreed that state law should expressly address the question whether a minor must be represented by a parent or guardian ***ad litem*** in order to sign a voluntary acknowledgment of paternity, or may do so without such representation. The alternative selected should determine the recission process. If a state requires a minor to be represented by a parent or guardian ***ad litem*** in order to acknowledge paternity (and the minor in fact has such representation), the usual recission period (60 days from the date of signing) should apply. If the state permits a minor to acknowledge paternity without representation by a parent or guardian ***ad litem***, but the minor in fact acknowledges paternity with such representation, the usual 60-day recission period should also apply. If, however, the minor acknowledges paternity without such representation, he or she should have 60 days from the date the minor turns eighteen to rescind. In addition, participants emphasized that there needs to be a process by which a minor can get a guardian ***ad litem*** who is not a parent appointed as a representative, to protect against parental abuse or coercion. Under any of these approaches, as federal law provides,[114] if a legal proceeding for support, custody, or visitation is brought while the parent is a minor, the minor would have to raise a challenge to the voluntary acknowledgment during the proceeding or the right to challenge would be waived.

f. Default Judgments

Federal law requires states to have procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by state law.[115] This allows the mother, or the state in a public assistance case, to obtain a determination of paternity when the man named as the father is not present for the initial hearing or for subsequent paternity proceedings. However, rules vary in different jurisdictions as to what type of notice must be given before a default can be entered, and under what circumstances a default judgment can be entered or vacated.

The standards governing default judgments should balance important conflicting interests: the right of the putative father to notice and an opportunity to be heard before paternity is established and a child support order set, and the right of the child to obtain a determination of paternity and support from a father who knowingly fails to appear in court. But participants thought that, to the extent possible, default judgments should be the exception—not the rule—in state determinations of paternity.[116] Participants agreed that paternity determinations and child support orders of which men have no knowledge are not only unfair to the men, they are less likely to produce tangible benefits for children and mothers.

Participants discussed when the entry of a default is appropriate and when it is appropriate to vacate a default. Notice was the most important factor. Participants were especially concerned about protecting the putative father's rights in jurisdictions in

Concern was expressed from both the mother's and father's perspective about the ability of minors, on their own, to understand the legal consequences of paternity acknowledgment.

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which minimum levels of notice, such as publication notice (where a notice of the proceeding is put into the newspaper), were considered sufficient.

Most participants agreed that when the putative father shows up for at least one court proceeding and then fails to show up again, a default judgment is appropriate, particularly when a paternity test has already established a high probability that the man is the child's father. They reasoned that the man knew he was in the middle of a paternity proceeding, and chose not to participate further.

Participants were divided on what should happen when the man fails to show up for any proceeding connected to the establishment of paternity. Most participants thought that, in most instances, notice in the form of personal service on the putative father should be required before entry of a default judgment. Some argued that personal service might be too high a standard, because some men would evade service. One participant proposed that instead of issuing a default in this situation, a warrant should be issued for the named man's arrest, as is done in cases of domestic violence.

Participants considered whether to balance the competing interests by making the process for vacating a default judgment easier. Some participants argued that even in cases of long-standing defaults, the courts should be open to vacating judgments, reestablishing awards and wiping out arrears, because this would encourage fathers to appear in court and get paternity resolved and an appropriate order entered. Other participants were against this, saying the effect was to allow fathers to escape or reduce their responsibilities, leaving the mother to support the child alone. Participants agreed that they did not want to establish a system in which it would be better for the father to avoid the proceeding than to appear, but did not reach a consensus on the circumstances under which it should be possible to vacate default judgments.

Using the threat of a statutory rape prosecution to compel paternity establishment or child support payments treats paternity establishment and child support, in effect, as a punishment.

C. Legal issues

The legal establishment of paternity necessarily brings parents into the formal legal or administrative systems. Both voluntary paternity acknowledgments, and administrative or judicial determinations of paternity, for example, are filed with the state birth records agency and must include each parent's name, address, date of birth, and Social Security number. This involvement with the formal family law system can lead to parents' involvement with the criminal justice or immigration systems.

a. Paternity establishment and statutory rape

The paternity establishment process for minor mothers and the putative fathers of their children can implicate a state's statutory rape laws in important ways. These laws make sexual intercourse with an individual under a certain age illegal, even if consensual. Although these laws are not often aggressively enforced, they have been invoked in paternity establishment and child support settings to compel particular behavior. For example, in some jurisdictions, the threat of a statutory rape prosecution has been used as leverage to compel paternity establishment or child support payments. Participants working with both mothers and fathers criticized this practice of treating paternity establishment and child support as, in effect, a punishment. Participants also were concerned about the practice in some jurisdictions of using voluntary acknowledgments of paternity as proof of statutory rape. Participants criticized this practice as providing a disincentive for young mothers and their partners to voluntarily sign an acknowledgment of paternity.

Participants agreed that the sole punishment for statutory rape should not be to require the establishment of paternity and payment of child support by the perpetrator. If criminal prosecution is appropriate, the primary punishment should be the imposition of the relevant criminal sanctions. Participants were divided on whether establishing paternity and

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paying child support should be able to be *part* of the punishment. Some argued that the child support and criminal justice systems should be kept totally separate or the message is being sent that paternity establishment and paying child support is a punishment. Others argued that the criminal justice system should be able to help secure the establishment of paternity and the payment of child support.

Most participants agreed that a voluntary acknowledgment of paternity should not generally be able to be used as evidence in a later prosecution for statutory rape. Some thought that it should never be admissible, but others opposed an absolute prohibition because they were concerned about the ability to prosecute some cases involving violence or incest without such evidence.

One way of addressing these issues might be through broader changes in statutory rape laws, especially changes that would make it easier to distinguish abusive from non-abusive relationships. Some participants argued that the standard for statutory rape should be an age-differential standard (e.g., requiring a difference in age of, say, five years) rather than a flat cutoff at a certain age. This would make it more likely that only relationships in which older individuals are taking advantage of considerably younger individuals would be prosecuted.

b. Paternity establishment and non-citizen parents and children

While paternity establishment has important legal ramifications for all parents, it presents unique issues for non-citizen parents. For example, a non-citizen parent who is adjusting his or her status to become a naturalized citizen must demonstrate that he or she possesses "good moral character" in order to adjust status successfully.[11] A non-citizen father who establishes paternity, but, for whatever reason, fails to provide child support for his child could be considered to lack "good moral character" and denied citizen status. A non-citizen mother who has a child out of wedlock but does not establish paternity for that child could be considered to lack "good moral character" and denied citizen status. An unfortunate result of the "good moral character" test is that in situations in which both parents of a child born out of wedlock are non-citizens, the desire of each parent to satisfy the test could encourage the mother to seek paternity establishment, but discourage the father from doing so.

In those cases in which a non-citizen father is willing to establish paternity and also establish a child support order, the non-citizen father faces an additional obstacle to adjusting his status. A non-citizen seeking to adjust his status must have the ability to support himself at 125 percent of poverty. Because not all states guarantee noncustodial parents a self-support reserve at that level in their child support award calculation, a low-income non-citizen father seeking to adjust his status is not likely to be able to meet his child support obligation and also support himself at 125 percent of poverty. In those instances, too, a non-citizen father could be denied citizen status.

Recommending changes in immigration policies are beyond the scope of this report, but participants agreed that agencies and community groups working to encourage paternity establishment in immigrant communities need to provide better information about the implications for immigration status of paternity establishment or non-establishment. They also agreed that immigration policies, as well as child support policies, need to be changed to enable non-citizen parents to work together to support their children and achieve citizen status.

An unfortunate result of the "good moral character" test for becoming a United States citizen is that it encourages the mother to seek paternity establishment, but discourages the father from doing so.

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IV. RECOMMENDATIONS FOR IMPROVING PATERNITY ESTABLISHMENT PRACTICES AND PROCEDURES FOR LOW-INCOME MOTHERS, FATHERS AND CHILDREN

The policy recommendations of the participants in the Common Ground project are an attempt to address the concerns articulated in their discussions. Although not every participant agrees with every recommendation, a majority of the participants support each included recommendation.

The goal of the recommendations is to improve paternity establishment practices and procedures by providing low-income parents with: full and accurate information; access to a process that is fair, and protects against domestic violence; a right to initiate that process, either together or individually, upon their own volition and not because the state requires it as a condition of public benefits; and related child support policies that will help parents pay adequate, realistically set awards that will benefit the children on whose behalf they are paid. The adoption and implementation of these recommendations, as well as others that will be developed in future reports, should help increase the financial and emotional support available to children of low-income parents, promote effective co-parenting relationships, and, most importantly, improve outcomes for these fragile families—who are struggling so mightily for a better life.

1. Parents should be fully informed about paternity establishment.

To improve the information available to parents, states should develop comprehensive and honest education programs that are designed to inform three audiences of the meaning and consequences of paternity establishment: the general public, staff of public and private agencies and organizations that assist parents in the paternity establishment process, and parents who have not established paternity.

a. States should develop culturally and linguistically sensitive public education campaigns to improve the public's understanding of paternity establishment.

The messages of these campaigns should be honest about the economic and other consequences of establishing paternity for children and parents, including information about the potential benefits of establishing, early in a child's life, a lasting legal relationship between the child and both parents. The development of these campaigns should include a process for input by community-based organizations on the appropriateness of materials and messages and effective ways of communicating them. Some materials should be designed for school audiences.

b. States should develop educational materials for parents and prospective parents that are sensitive to the issues of race, gender, sexual orientation, domestic violence, cultural and socio-economic circumstances and that provide specific and honest information about the rights and responsibilities that accompany paternity establishment.

These materials should explain to parents, including minor parents, the process for acknowledging paternity (and rescinding an acknowledgment). They should address the special rules and consequences for individuals who are receiving or have received public assistance. They should provide information about the legal rights and responsibilities that flow from paternity establishment, including in the areas of child support, custody, and visitation. And they should provide information about other implications of paternity establishment, for example, on immigration and citizenship status and on potential liability for statutory rape.

c. States should provide parents who both want to establish paternity with access to a simple and accessible voluntary paternity acknowledgment process, not limited to the hospital setting.

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Because many hospital maternity stays are very brief, and the period of time surrounding childbirth is emotionally and physically stressful and tiring for both parents, it is important that parents have other opportunities to acknowledge paternity voluntarily. But venues should be selected carefully to ensure that staff can adequately handle the additional responsibilities. In addition to hospitals, child support enforcement offices, and birth records offices, possible settings include social service providers such as Head Start and other child care centers and, in some instances, community-based organizations. However, already-overburdened community organizations, agencies and service providers may need additional resources to provide the additional services. States should not impose fees on parents who want to acknowledge paternity in any authorized setting.

d. States should ensure that the staff of agencies, institutions and organizations authorized to provide paternity establishment services are adequately trained to provide complete and accurate information to parents about the rights and responsibilities associated with paternity establishment.

The training should ensure that staff provide honest and accurate information and do not mislead or hide information from parents in order to achieve a state's goal of increasing the number of paternities established. It should ensure that staff help parents of children who are receiving or have received public assistance understand the rules that particularly apply to them and their effect on both parents. It should ensure that staff understand the manifestations and consequences of domestic violence (see recommendation 4) and know how to provide parents with appropriate resource and referral services if these are needed. It should ensure that staff understand and communicate the legal consequences of establishing paternity, including for minors, and can provide referrals to parents who need more detailed information or additional help, such as legal services. It should ensure that staff do not emphasize the importance of identifying the biological parents of a child to a degree that negates the value of other parenting arrangements and networks, for example, by undermining the role that extended families and other committed adults play in raising a child or by being insensitive to family arrangements that reflect the norms of a particular culture, race, religion or sexual orientation.

e. States should ensure that forms for the voluntary acknowledgment of paternity include information about the effect of paternity establishment on custody and visitation.

The forms used to acknowledge paternity should expressly inform parents about the effect that signing the form will have on parents' immediate and longer-term custody and visitation rights. They should include information on the rules for determining immediate custody that operate in a particular state, and inform parents how to otherwise resolve custody issues.

2. Paternity establishment should not be coerced by the state against the wishes of both parents.

Paternity establishment creates a legal relationship that carries with it enormous implications for the lives of the involved parties, including the right to seek custody of, or visitation with, a child and the responsibility of providing economic support. Stronger, better relationships for supporting children are likely to be created and sustained if paternity establishment is desired by at least one of the parents, not coerced by the state.

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IV. RECOMMENDATIONS FOR IMPROVING PATERNITY ESTABLISHMENT PRACTICES AND PROCEDURES FOR LOW-INCOME MOTHERS, FATHERS AND CHILDREN

a. Congress and the states should eliminate the requirements that custodial parents who seek public assistance assign their child support rights to the state and cooperate with the state in establishing paternity and establishing and enforcing child support.

b. States should strongly discourage prosecutorial strategies that use threats of criminal prosecution for statutory rape to establish paternity.

States should also generally discourage the use by prosecutors of voluntary acknowledgments of paternity as evidence in statutory rape prosecutions.

3. Paternity establishment procedures should be fair.

States should have fair procedures for establishing paternity that afford both parents due process and include protections against domestic violence (see Recommendation 4).

a. States should provide prompt and effective assistance to both fathers and mothers who wish to initiate paternity proceedings, with protections for victims of domestic violence.

As federal law requires, states should assist fathers as well as mothers in establishing paternity; but, in a situation in which there is a risk of abuse or violence, the establishment of paternity should be pursued carefully and with special protections (see Recommendation 4).

b. States should have clear procedures for rescinding a voluntary acknowledgment of paternity, within 60 days of signing, that are easily accessible to low-income parents and others without legal representation.

States should make information about these procedures available to parents, the staff of public and private institutions and organizations that assist parents in the paternity establishment process, and the general public. The rescission process, and information provided about it, should address all of its legal consequences, such as rescission of any custody, visitation or other rights created by the acknowledgment and amendment of the birth certificate, if necessary.

c. States should make greater efforts to ensure actual notice to the putative father before entry of a default judgment of paternity.

d. States should not require either parent to pay for genetic testing, if the parent is low-income.

e. State laws should expressly address the extent to which minors may acknowledge paternity voluntarily.

If a state requires a minor to be represented by a parent or guardian *ad litem* in order to acknowledge paternity (and the minor in fact has such representation), the usual recission period (60 days from the date of signing) should apply. If the state permits a minor to acknowledge paternity without representation by a parent or guardian *ad litem*, but the minor in fact acknowledges paternity with such representation, the usual 60-day recission period should also apply. If, however, the minor acknowledges paternity without such representation, he or she should have 60 days from the date the minor turns eighteen to rescind. In addition, states should have a process by which a minor can get a guardian *ad litem* who is not a parent appointed as a representative, to protect against parental abuse or coercion.

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4. Paternity establishment policies and procedures, and the procedures that flow from paternity establishment, should take domestic violence into account.

Paternity establishment does not merely create a legal relationship between a father and a child. It establishes a legal basis for future interactions between the father and the mother on issues of child support, custody, and visitation that may create risks of domestic violence unless additional safeguards and services are in place. Future Common Ground meetings will develop recommendations for these safeguards and services; the recommendations that follow concern the process of paternity establishment itself.

a. If federal law is not changed to eliminate the requirement that public assistance applicants must cooperate with paternity establishment proceedings and child support enforcement, then states should ensure that all public assistance applicants are adequately informed about and given a meaningful opportunity to claim the "good cause" exception to the cooperation requirement.

As part of states' efforts to improve implementation of the "good cause" exception, states should acknowledge that a woman's assessment of the danger she or her children face can change over time, and should therefore provide women with multiple, effective opportunities to access or halt the processes that lead to paternity establishment.

b. States should ensure that individuals who acknowledge paternity voluntarily actually do so without coercion, or fear or threat of domestic violence.

Hospital staff should screen for domestic violence before attempting to proceed with a voluntary acknowledgment. Given the age disparity between many minor mothers and their partners, and the consequent risk of coercion, domestic violence screening in this population is especially important. Staff at locations other than hospitals who are engaged in the paternity acknowledgment process should be trained about domestic violence and its effect on whether an acknowledgment is truly voluntary. Finally, all institutions, agencies and organizations involved in the voluntary paternity acknowledgment process should provide domestic violence resource and referral services to parents who need them.

c. States should ensure that domestic violence survivors who wish to establish paternity, or whose partners or former partners are seeking to establish paternity, are adequately protected.

Protections should include procedures to ensure that direct contact with the partner or former partner is minimized, addresses and other personal identifying information are kept confidential, and the survivor is able to obtain representation on custody and visitation challenges that may arise as the result of establishing paternity.

5. The policies associated with paternity establishment should increase the economic and emotional support available to children of low-income parents.

Although the focus of this report is paternity establishment, Common Ground participants concluded that its recommendations should begin to address related policy issues, to ensure that paternity establishment promotes the ultimate goal of increasing positive outcomes for children. These recommendations will be further developed in subsequent Common Ground reports.

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IV. RECOMMENDATIONS FOR IMPROVING PATERNITY ESTABLISHMENT PRACTICES AND PROCEDURES FOR LOW-INCOME MOTHERS, FATHERS AND CHILDREN

a. Congress and the states should adopt policies that give child support payments to children to increase their well-being, not to the government as reimbursement for public assistance.

If federal law is not changed to eliminate the requirement that public assistance applicants must assign their child support to the state (see Recommendation 2a), Congress should require, or at least strongly encourage, states to adopt a policy for the pass-through and disregard of child support. Even in the absence of federal law changes, states should utilize the flexibility they have under TANF to adopt such policies.

b. States should eliminate public debt and other policies, such as requiring reimbursement of Medicaid birthing costs, that are unrelated to ability to pay and impose impossible financial burdens on low-income parents.

c. States should provide prompt and effective assistance to parents who want assistance in establishing or enforcing a child support order.

d. States should ensure that awards of current child support are realistic, and easier for low-income parents to modify as circumstances change.

e. States should ensure that adequate social services, including job training, education, and social services such as child care are made available to low-income custodial and noncustodial parents, especially minor parents, to increase their ability to provide support to their children.

f. States should ensure that all parents who pursue paternity establishment are offered the opportunity to participate in parenting education programs that assist in the development of responsible, respectful and reliable cooperative parenting.

Participation in a parenting education program should be voluntary, and should not be a prerequisite to receipt of other social services. However, opportunities to access such programs should be available, at a minimum, after parents have acknowledged or established paternity, and ideally should also be available prior to the initiation of paternity proceedings.

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ENDNOTES

1. For a more detailed description of the historical background contained in the next few paragraphs, *see* Irwin Garfinkel *et al.*, *A Brief History of Child Support Policies in the United States*, in *Fathers Under Fire: The Revolution in Child Support Enforcement* 14-30 (Irwin Garfinkel *et al.*, eds., 1998) [hereinafter *Fathers Under Fire*]; Paula Roberts, *A Guide to Establishing Paternity for Non-Marital Children: Implementing Provisions of the Personal Responsibility and Work Opportunities Reconciliation Act of 1996* (Center for Law and Social Policy 1996) [hereinafter Roberts, *Establishing Paternity*].
2. *See* P.L. 93-647, codified at 42 U.S.C. § 651 *et seq.* (1975) (current version as amended codified at 42 U.S.C. § 651 *et seq.* (1999)).
3. *See* 42 U.S.C. § 654 *et seq.* (1975) (current version as amended codified at 42 U.S.C. § 654 *et seq.* (1999)).
4. *See* 42 U.S.C. § 602(a)(26) (1989) (current version as amended codified at 42 U.S.C. § 608(a)(3) (1999)).
5. *See* 42 U.S.C. § 654(6) (1989) (current version as amended codified at 42 U.S.C. § 654(4) (1999)).
6. For a summary of the legislative history of the child support program, *see* Committee on Ways and Means, U.S. House of Representatives, *1998 Green Book: Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means* 545-547, 611-626 [hereinafter *1998 Green Book*].
7. *See* Office of Child Support Enforcement, *22nd Annual Report to Congress* 61, Table 2 (1999) [hereinafter OCSE, *22nd Annual Report*].
8. For a more detailed description of the historical background contained in this paragraph, *see* Roberts, *Establishing Paternity*, *supra* note 1, at 8-10.
9. *See* P.L. 98-378 § 33 (1984) (current version codified at 42 U.S.C. § 666(a)(5)(A) (1999)).
10. *See* P.L. 100-485 § 111 (1988) (current version codified at 42 U.S.C. § 666(a)(5)(B)(i) (1999)).
11. *See* P.L. 103-66 § 13721 (1993) (current version codified at 42 U.S.C. § 666(a)(5)(G) (1999)).
12. *See* P.L. 103-66 § 13721 (1993) (current version codified at 42 U.S.C. § 666(a)(5)(C) (1999)).
13. *See* P.L. 103-66 § 13721 (1993) (current version codified at 42 U.S.C. § 666(a)(5)(G) (1999)).
14. *See 1998 Green Book*, *supra* note 6, at 556-560. *Compare* P.L. 100-485 § 111(a) (1988) *with* P.L. 103-66 § 103721 (1993) (current version as amended at 42 U.S.C. § 652(g) (1999)).
15. *See generally 1998 Green Book*, *supra* note 6, at 620-626; Roberts, *Establishing Paternity*, *supra* note 1; Jacquelyn Boggess, *A Q & A for Unmarried, Noncustodial Fathers—A Question and Answer Resource on Paternity Establishment and Child Support* (Center on Fathers, Families, and Public Policy 1997).
16. *See* P.L. 104-193 § 103 (current version codified at 42 U.S.C. §§ 408(a)(3), 409(a)(9) (1999)).
17. *See* 42 U.S.C. § 666(a)(5)(C)(iv) (1999).
18. *See* 42 U.S.C. § 666(a)(5)(D)(ii) (1999).
19. *See* 42 U.S.C. § 666(a)(5)(E) (1999).
20. *See* 42 U.S.C. § 666(a)(5)(D)(iii) (1999).
21. *See* 42 U.S.C. § 666(a)(5)(D)(i) (1999).
22. *See* 42 U.S.C. § 666(a)(5)(C)(iii)(II)(aa) (1999); 45 C.F.R. § 303.5 (g)(1)(ii)(A) (1999).
23. *See* 42 U.S.C. § 666(a)(5)(C)(iii)(II)(bb) (1999).
24. *See id.*
25. *See* 45 C.F.R. § 303.5(g)(2)(i)(D) (1999).
26. *See* 42 U.S.C. §§ 666(c)(1)(a), 666(a)(5)(B)(ii)(I), 666 (a)(5)(F)(iii) (1999).
27. *See* 42 U.S.C. §§ 666(a)(5)(H), 666(a)(5)(I), 666(a)(5)(J) (1999).
28. *See* 42 U.S.C. § 666(a)(5)(L) (1999).
29. *See* 42 U.S.C. § 602(a)(26)(B) (1989) (current version as amended codified at 42 U.S.C. § 608(a)(2) (1999)).
30. *See* 42 U.S.C. § 608(a)(2) (1999).

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ENDNOTES

31. *See* Vicki Turetsky, *State Child Support Cooperation and Good Cause: A Preliminary Look at State Policies* (Center for Law and Social Policy 1998) [hereinafter Turetsky, *State Child Support*]. Some states impose the full-family sanction immediately; others do so only if the noncooperation has persisted for a period of time or been repeated. *See id.*
32. *See* 45 C.F.R. § 232.12 (1995), *superceded by* 42 U.S.C. § 654(29)(A) (1999).
33. *See* 42 U.S.C. § 654(29)(A) (1999).
34. *See* Turetsky, *State Child Support*, *supra* note 31, *passim*.
35. *See* 42 U.S.C. § 654(29)(D) (1999).
36. *See* 42 U.S.C. § 602(a)(26)(B) (1989) (current version codified at 42 U.S.C. § 608(a)(2) (1999)).
37. *See* 45 C.F.R. § 232.42 (1995), *superceded by* 42 U.S.C. § 654(29)(A) (1999).
38. *See* 42 U.S.C. § 654(29)(A) (1999).
39. *See* Jody Raphael & Richard Tolman, *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship between Domestic Violence and Welfare* (1997) [hereinafter Raphael & Tolman, *Trapped by Poverty*]; Project for Research on Welfare, Work, and Domestic Violence, *Trapped by Poverty, Trapped by Abuse, Supplement 1* (1998) [hereinafter *Trapped by Poverty, Supp. 1*].
40. *See* OCSE, *22nd Annual Report* 106, *supra* note 7, Table 46.
41. *See* 42 U.S.C. § 602(a)(26)(B) (1989) (current version as amended codified at 42 U.S.C. § 654(29) (1999)).
42. *See* 42 U.S.C. § 654(29) (1999).
43. *See* 42 U.S.C. § 609(a)(5) (1999).
44. *See* 42 U.S.C. § 654(29) (1999).
45. *See* 42 U.S.C. § 602(a)(26)(A) (1989) (current version as amended codified at 42 U.S.C. § 608(a)(3) (1999)).
46. *See* P. L. 98-369 § 2640 (1984) (current version as amended codified at 42 U.S.C. § 657(a)(1) (1999)).
47. *See* 42 U.S.C. § 657(b)(2) (1989) (current version as amended codified at 42 U.S.C. § 657(a)(1) (1999)).
48. *See* 42 U.S.C. § 608 (a)(3) (1999). The regulations issued by the Department of Health and Human Services to implement this provision of the statute clarify that only certain forms of aid funded by TANF count as "assistance" for purposes of child support assignment. Cash payments and vouchers designed to provide for ongoing basic needs are "assistance." Other types of help are not considered "assistance," including non-recurring short-term benefits, work subsidies paid to a third party, supportive services such as child care and transportation, refundable earned income tax credits, payments to an Individual Development Account, and services such as counseling and case management. *See* 45 CFR § 260.31(b) (1999). These regulations allow working poor families who receive various supportive services to keep more of the child support paid on their behalf, since the receipt of these services will not trigger an assignment.
49. *See* 42 U.S.C. § 657(a)(1) (1999).
50. As of January 1, 1999, 27 states and the District of Columbia retained all of the child support collected; 23 states passed through some child support. *See* Paula Roberts, *State Policy Re: Pass-Through and Disregard of Current Month's Child Support Collected for Families Receiving TANF-Funded Cash Assistance* (Center for Law and Social Policy 1999).
51. *See* OCSE, *22nd Annual Report* 75, *supra* note 7, Table 16.
52. *See id.*
53. *See* 42 U.S.C. § 657(a)(2)(A) (1999).
54. *Compare* 42 U.S.C. § 657(c) (1989) *with* 42 U.S.C.§ 657(a)(2)(A) (1999).

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55. *See* 42 U.S.C. § 657(a)(2)(B)(iv) (1999). The rules governing the distribution of child support for families that formerly received public assistance are complex, and have been the subject of policy guidance from the federal Office of Child Support Enforcement. *See* Office of Child Support Enforcement, U.S. Department of Health & Human Services, *Action Transmittal 97-17* (1997). *See also* Office of Child Support Enforcement, U.S. Department of Health & Human Services, *Action Transmittal 98-27* (1998).
56. *See* 42 U.S.C. § 652 (g)(1)(A) (1999). States have some flexibility in deciding what base population to use in measuring their paternity establishment percentage. They may choose as their base population all minor children born out of wedlock who are receiving TANF or public/foster care assistance, who are receiving IV-D services, or who are residing in the state. *See* 42 U.S.C. § 652(g)(2) (1999).
57. *See* 42 U.S.C. § 652(g)(1) (1999). States that fail to meet the 90% standard can avoid a penalty by demonstrating sufficient improvement in the next fiscal year. *See id.* For example, the statute provides that states with paternity establishment percentages between 75 and 90% must improve by two percentage points per year; states at less than 40% must improve by six percentage points. *See id.*
58. *See* P. L. 105-200 (1998) (current version codified at 42 U.S.C. § 658a(b) (1999)).
59. *See* Office of Child Support Enforcement, *FY 1998 Preliminary Data Report* 8, Table 2 (1999).
60. *See* Sally Curtin & Joyce Martin, *Births: Preliminary Data for 1999*, 48 National Vital Statistics Reports 13 (Table 6) (2000). The proportion of births to unmarried parents is higher among Blacks (69%) and Hispanics (42%) than among Whites (27%). *See id.*
61. *See* Sarah McClanahan & Irwin Garfinkel, *The Fragile Families and Child Wellbeing Study: Questions, Design, and a Few Preliminary Results*, Working Paper 00-07-FF (Princeton University Bendheim-Thoman Center for Research on Child Wellbeing 2000). The Fragile Families and Child Wellbeing Study will follow a new birth cohort of approximately 4,700 children, including 3,600 children born to unmarried parents. The new data will be representative of nonmarital births in each of 20 cities and in U.S. cities with populations over 200,000. Both mothers and fathers will be followed for a least four years, and in-home assessments of children's development will be carried out when the child is four years old.
62. *See* Irwin Garfinkel & Sara McLanahan, *Fragile Families and Child Well-Being: A survey of new parents*, 21 Focus 9-11 (2000) [hereinafter Garfinkel & McLanahan, *Fragile Families*].
63. *See id.*
64. *See id.*
65. *See* Larry Bumpass & Hsien-Hen Lu, *Trends in Cohabitation and Implications for Children's Family Context in the U.S.*, CDE Working Paper No. 98-15, 13-14 (University of Wisconsin-Madison Center for Demography and Ecology 1998).
66. *See* Larry Bumpass & Hsien-Hen Lu, *Cohabitation: How the families of U.S. children are changing*, 21 Focus 5-8 (2000).
67. *See* Garfinkel & McLanahan, Fragile Families, *supra* note 62, at 10.
68. *See id.*
69. *See id.*
70. *See id. See also* Sara McLanahan *et al.*, *Unwed Parents or Fragile Families? Implications for Welfare and Child Support Policy*, Working Paper 00-04-FF 20 (Princeton University Bendheim-Thoman Center for Research on Child Wellbeing 2000).

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ENDNOTES

71. Four studies of poor women, mostly welfare recipients, found that 15 to 32% were currently experiencing domestic violence from an intimate male partner; the reported lifetime prevalence ranged from 34 to 65%. See Raphael & Tolman, *Trapped by Poverty, supra* note 59, at 5. The studies did not indicate whether the abuser was the father of the woman's child. *See id.* In a survey of over 1,000 female applicants for public assistance in Colorado, 40% disclosed current or past abuse as an adult; 75% of these women (30% of the total) reported that the abusers were the fathers of one or more of their children. *See* Jessica Pearson *et al.*, *Child Support and Domestic Violence: The Victims Speak Out*, in *Trapped by Poverty, Supp.I, supra* note 39, at 1.
72. *See* Garfinkel & McLanahan, *Fragile Families, supra* note 62, at 11
73. *See id.*
74. *See* Ariel Halpern, *Poverty Among Children Born Outside of Marriage: Preliminary Findings from the National Survey of America's Families*, Assessing the New Federalism Discussion Paper 99-16, 6-12, Tables 1 & 2 (Urban Institute 1999) [hereinafter Halpern, *Poverty Among Children*]. The study did not analyze the impact in differences in fathers' characteristics.
75. *See id.* at 6-17, Tables 1 & 2.
76. *See* Elaine Sorenson & Ariel Halpern, *Child Support Enforcement: How Well Is It Doing?*, Assessing the New Federalism Discussion Paper 99-11, 2-4 (Urban Institute 1999); *See also* Halpern, *Poverty Among Children, supra* note 74, at 9; Judith Selzer, *Child Support and Child Access: Experiences of Divorced and Nonmarital Families*, in *Child Support: The Next Frontier* 69, 73-74 (J. Thomas Oldham & Marygold Melli, eds., 2000) [hereinafter Selzer, *Child Support*].
77. *See* Elaine Sorenson & Chava Zibman, *To What Extent Do Children Benefit from Child Support?*, Assessing the New Federalism Discussion Paper 99-11, 6-7 (Urban Institute 2000). Child support provides over one-quarter of the family income of all poor children who receive it. *See id.*
78. *See* Selzer, *Child Support, supra* note 76, at 69, 73-74.
79. *See id.* at 74 (more secure economic circumstances of fathers for whom legal paternity is established relative to those without paternity may account for different payment rates); Jessica Pearson & Nancy Thoennes, *Establishing Paternity in Colorado: Final Report* iv (Center for Policy Research 1997) [hereinafter Pearson & Thoennes, *Establishing Paternity in Colorado*] (parents who establish paternity voluntarily have more positive relationships with each other at the time of birth and the fathers are more likely to be employed full time).
80. An analysis of the various studies that have estimated the income of nonresident parents found that most studies show income for never-married fathers to be typically in the high teens as compared to income in the $30,000-40,000 range for divorced fathers (using 1995 dollars). *See* Irwin Garfinkel, *et al.*, *A Patchwork Portrait of Nonresident Fathers*, in *Fathers Under Fire, supra* note 1, at 31-60.
81. *See* 42 U.S.C § 608(a)(7) (1999).
82. Nearly half the states have either a shorter lifetime limit or a limit on the number of months within a certain period that a family can receive assistance (for example, 24 months in a 48- or 60-month period, in addition to a 60-month lifetime limit). *See* U.S. Department of Health & Human Services, Administration for Children & Families, *Temporary Assistance to Needy Families (TANF) Program, Second Annual Report to Congress* 162 (1999) [hereinafter *TANF Program Second Annual Report*].

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83. *See* 42 U.S.C. § 608(a)(2) (1999). About 14 states impose full-family sanctions for the first instance of noncompliance; 36 states impose them as their most severe penalty. *See* Jan Kaplan, *The Use of Sanctions Under TANF*, Welfare Information Network Issue Notes, Vol. 3, No. 3 (1999).
84. *See* 42 U.S.C. § 608(b)(3) (1999).
85. States are required to have a good cause exception for child support cooperation requirements, but states have flexibility to decide whether to give special consideration to victims of domestic violence with respect to other TANF requirements. *See* 42 U.S.C. § 602(a)(7)(c) (1999). Twenty-eight states have certified that they are adopting the "Family Violence Option," and will screen for and assist victims of domestic violence. *See TANF Program Second Annual Report*, *supra* note 82, at 167-168. Most of the remaining states report that they are considering adopting the option or addressing domestic violence in another way. *See id.* Only limited information is available on how state policies to address domestic violence are being implemented. *See* Jody Raphael & Sheila Haennicke, *The Family Violence Option: An Early Assessment, Revised Draft II* (1998).
86. *See* U.S. General Accounting Office, *Welfare Reform: State Sanction Policies and Number of Families Affected*, HEHS-00-44 (2000).
87. The eligibility restrictions are complex and vary by program. *See* Fredrica Kramer, *Welfare Reform and Immigrants: Recent Developments and a Review of Key State Decisions*, Welfare Information Network Issue Notes, Vol. 1, No. 7 (1997). The Balanced Budget Act of 1997 restored SSI and Food Stamp eligibility to some legal immigrants who were living in the country before August, 1996, when PRWORA was passed. *See* P.L. 105-33 § 5302 (1997).
88. The Department of Health and Human Services reports that the number of families receiving public assistance dropped from 4,628,000 in January, 1996, before PRWORA was enacted, to 2,358,000 in December, 1999, a 49% decrease. *See* Adminstration for Children & Families, U.S. Department of Health & Human Services, Changes in TANF Caseloads, available at http://www.acf.dhhs.gov/news/stats/caseload.htm (last modified Aug. 22, 2000).
89. The poverty rate among female-headed households with children under 18 declined from 36.9% in 1996 to 33.8% in 1998, a decline of 8%. *See* U.S. Census Bureau, *Poverty in the United States: 1998*, Current Population Reports P60-207, Table B-3 (1999).
90. Food Stamp caseloads have declined nearly as rapidly as TANF caseloads, although about two-thirds of families that left the Food Stamp program appear to have incomes low enough to qualify for benefits. *See* Sheila Zedlewski & Sarah Brauner, *Are the Steep Declines in Food Stamp Participation Linked to Falling Welfare Caseloads*, New Federalism: National Survey of America's Families, Series B, No. B-3, at 1, Figure 1. & 2, Table 2 (1999). The poorest former welfare families—those with incomes below 50% of poverty—were especially likely to leave the Food Stamp program. *See id.* at 2, Table 2.
91. An estimated 675,000 people, a majority of them children, lost Medicaid coverage and became uninsured since PRWORA. *See* Rachel Klein, *Losing Health Insurance: Unintended Consequences of Welfare Reform* 1 (1999). *See also* Bowen Garrett & John Holahan, *Welfare Leavers, Medicaid Coverage, and Private Health Insurance*, New Federalism: National Survey of America's Families, No. B-13 (2000).
92. *See* Wendell Primus *et al.*, *The Initial Impacts of Welfare Reform on the Incomes of Single-Mother Families* viii-x (Center on Budget and Policy Priorities 1999).

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ENDNOTES

93. Most state paternity workers believe—and research has confirmed—that providing explicit information about the relationship between paternity establishment and child support enforcement significantly reduces the voluntary acknowledgment rate, especially among those mothers and fathers who had a prior AFDC/TANF or Medicaid history. *See* Pearson & Thoennes, *Establishing Paternity in Colorado*, *supra* note 79, at 19-30. Federal law requires states to notify mothers and fathers about the legal consequences of paternity establishment before they sign a voluntary acknowledgment, *see* 42 U.S.C. § 666(a)(5)(C)(i) (1999); however, states pressured to meet federal standards for paternity establishment, "may have to choose between candor and high acknowledgment rates," Pearson & Thoennes, *Establishing Paternity in Colorado*, *supra* note 79, at 30.

94. For a discussion of the reasons why changing the child support program from a welfare cost recovery program to a program that collects child support for families would be more consistent with the goals of welfare reform, *see* Vicki Turetsky, *What If All the Money Came Home?* (Center for Law and Social Policy 2000).

95. *See* U.S. Department of Health & Human Services, *Temporary Assistance for Needy Families (TANF) Program, Third Annual Report to Congress* 196 (2000) (28 states require work immediately upon receipt of benefits, nine states require work within six months or less, 13 states require work within 24 months, one state under waiver requires work within 30 months).

96. Relationship issues are discussed in more detail *infra*, Section III-2. In most cases, a custodial parent would be the one to seek a support order. However, a noncustodial parent might want to have an order established to ensure that the amount of his obligation reflected his actual income, and was not set retroactively based on welfare assistance payments or a level of imputed income that was higher than his actual income.

97. *See generally* Sara McLanahan & Gary Sandefur, *Growing up with a Single Parent: What Hurts, What Helps* (1994); Judith Wallerstein & Janet R. Johnston, *Children of Divorce: Recent Findings Regarding Long-Term Effects and Recent Studies of Joint and Sole Custody*, 11 Pediatrics in Review 197-204 (1990).

98. Witnessing, as well as experiencing, abuse is damaging to children. *See, e.g.*, Adele Harrell, *Children in Violent Homes*, in Urban Institute, *Family Violence: A Guide to Research* (1993). In addition, woman battering and child abuse often occur in the same family. *See* Susan Schechter & J.L. Edleson, *In the Best Interest of Women and Children* (1994).

99. *See* Pearson & Thoennes, *Establishing Paternity in Colorado*, *supra* note 79, at iv (strongest correlate of voluntary paternity establishment is parental relationship).

100. *See* Raphael & Tolman, *Trapped by Poverty*, *supra* note 39, at 5.

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101. "Paternity researchers are unanimous in concluding that the best time to establish voluntary paternity is at the time the child is born and that the likelihood of establishing paternity declines as children age." Pearson & Thoennes, *Establishing Paternity in Colorado*, *supra* note 79, at 3. *See also* Robert G. Williams, *et al.*, *Massachusetts Paternity Acknowledgment Program: Implementation Analysis and Program Results* 41-43 (Policy Studies, Inc. 1995). In Massachusetts, in 1994-95, in-hospital acknowledgments at birth accounted for 84% of voluntary acknowledgments, post-birth acknowledgments accounted for about 16%; in Boston, the only place for which such data were available, just under half of the post-birth voluntary acknowledgments were for children less than a year old, just over half were for children over a year old. *See id.*
102. *See* 42 U.S.C. § 666(a)(5)(B)(ii)(I) (1999).
103. *See* 42 U.S.C. § 666(a)(5)(B)(ii)(II) (1999).
104. *See* 42 U.S.C. § 666(a)(5)(D)(ii) (1999).
105. *See id.*
106. *See* § 666(a)(5)(D)(iii) (1999).
107. *See* 64 Fed. Reg. 46, 11802-11810 (1999), *amending* 45 C.F.R. § 302 (1999).
108. *See* Roberts, *Establishing Paternity*, *supra* note 1, at 27.
109. *See, e.g.*, S.D. Codified Laws § 25-5-25 (1999).
110. *See* 42 U.S.C. § 666(a)(5)(C)(i) (1999).
111. *See* Wyo. Stat. Ann. § 14-2-102(c) (2000); W. Va. Code § 48(A)-6-(b) (2000).
112. *See* Mass. Gen. Law Ann. ch. 209(C) § 11 (2000); Mont. Code Ann. §40-5-232(3) (2000).
113. *See* Roberts, *Establishing Paternity*, *supra* note 1, at 26-30.
114. *See* 42 U.S.C. § 666(a)(5)(D)(ii)(II) (1999).
115. *See* 42 U.S.C. § 666(a)(5)(H) (1999).
116. A study of how California courts are implementing that state's child support guideline found that more than 50% of child support orders were obtained by default. Nearly 75% of district attorney (IV-D) orders were obtained by default. *See* Judicial Council of California, *Review of Statewide Uniform Child Support Guideline 1998*, at 6-16 (1998). The study did not report on the percentage of paternity determinations that were obtained by default.
117. *See* 8 U.S.C. § 1427(a)(3) (2000).

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